national debt, upon which no substantial progress has been made since the Spanish War. Prof. James Brown Scott read the argument made by him at the second Hague Conference for the Court of Arbitral Justice, in which he showed conclusively the defects of the present so-called Permanent Court of Arbitration established by the Conference of 1899. As the masterful points of his argument proceeded, one could not help admiring the work done at The Hague by this trained scholar. Few men have done so much to put arbitration on the right basis as Prof. James Brown Scott. Professor Scott was followed by Hon. Richard Bartholdt, whose subject was "Peace by Right, not by War." Then came Mr. Bryan. Instead of speaking on a predetermined topic, he took up the discussion from points of departure given him by preceding speakers. His address was directed against war expenditures and in favor of the limitation of armaments. Some thought it one of his greatest speeches. Being a part of a discussion, it had about it an admirable freedom and spontaneity which a set oration could never have, and, while it did not appeal so strongly to the emotions as his speech of last year at the New York Congress, it more than made up for any oratorical deficiencies by its practical character and argumentative effect.

On Tuesday morning the delegates held a business meeting to consider the report of the Committee on Resolutions, which was presented by Mr. White. The resolutions, which will be given in full in our July issue, went right to the point, and besides supporting the measures of the second Hague Conference, emphasized in plain language the necessity for considering the limitation of armaments. The concluding part of the resolutions, in reference to permanent organization, will probably take effect in the form either of a new Pennsylvania State Peace Society or a stronger working arrangement among the present societies in Philadelphia. Whatever steps may be taken, an attempt will be made to keep the peace movement before the people of the State from now until the third Hague Conference.

In the afternoon an Educational Meeting was held at Horticultural Hall, the chairman of which was Provost Charles C. Harrison of the University of Pennsylvania. The speakers were Chancellor Henry C. White of the University of Georgia, Professor Isaac Sharpless of Haverford College, Professor James D. Moffat of Washington and Jefferson College, President Lawrence A. Delurey of Villa Nova College and Rev. Walter Walsh of Dundee, Scotland. While the different speakers approached their subjects from different points of view, made a variety of suggestions and brought forward new information, all were agreed on the fundamental principles of the peace movement, and showed that the colleges of all denominations and kinds were ready to carry forward the program in its behalf. Mr. Walsh's address had to do more particularly with the children of the school age, and was on the same lines as his chapter on the effect of war teaching upon the school child, which appears in his book, "The Moral Damage of War." It was one of the best contributions made to any of the meetings.

The evening was remarkable for a banquet held at the Bellevue-Stratford Hotel and attended by some four hundred people. Hon. Wayne MacVeagh, one of the most highly respected and popular citizens of Pennsylvania, a man who understood the occasion and his people to perfection and represented them as perhaps no other man could have done, was chairman and toastmaster. Baron Kogoro Takahira, Ambassador from Japan, was unavoidably detained in Washington, as well as Hon. Shelby M. Cullom, Senator of Illinois, Congressman Theodore E. Burton of Ohio, Hon. John Dalzell, Congressman from Pennsylvania, and Hon. Joaquim Nabuco, Ambassador from Brazil. But impressive speeches were made by Hon. John Barrett and by Rev. Walter Walsh, Mrs. Charles Newbold Thorpe and Henry C. Niles. A stirring speech was read by Señor Don Gonzola Quesada, Minister from Cuba, who spoke for the Latin-American civilization and its early and prominent part in the movement for arbitration and internationalism.

Compared with events of a similar kind in recent years, the Congress stands out as an occasion of great importance in the peace movement in America. It was held in one of the largest and most influential States of the Union and in one of its most representative centres of population, education and political influence. Though only a State Congress, it was in some respects quite as significant as the National Peace Congress held in New York a year ago. It was distinguished particularly for its thoughtful papers and addresses, some of which were of the highest order, and will always rank with the best of peace literature.

The Second Hague Conference a Peace Conference.

BY HON. JAMES BROWN SCOTT.

Address at the Eightieth Anniversary of the American Peace Society, Boston, May 12, 1908.

[Dr. Scott, the author of this article, is the Solicitor of the State Department. He was the Technical Delegate of the United States to the second International Peace Conference at The Hague, and drafted the plan for a regular International Court of Justice, the principle of which was unanimously approved by the delegations, but the organization of which awaits the agreement of the governments as to the method of selection of the judges Dr. Scott introduced his address at the Annual Dinner by a prelude on William Ladd, the founder of the American Peace Society, which was so important that we propose to publish it as a separate article in our next month's issue. — ED.]

The *Acte Final* of the recent Hague Conference states the calling of the Conference in a single happy paragraph:

"The second International Peace Conference, first proposed by the President of the United States of America, having been, upon the invitation of His Majesty the Emperor of all the Russias, convoked by Her Majesty the Queen of The Netherlands, met the 15th of June, 1907, at The Hague, in the Hall of Knights, charged with the mission to give a further development to those humanitarian principles which served as a basis for the work of the first Conference of 1899."

From this preamble it appears that the second Peace Conference was initiated by President Roosevelt, although the idea of a conference as an international institution is due to the Czar of Russia. It is therefore not too much to say that the United States and Russia were jointly interested in the Conference in a personal and a peculiar way beyond all others, and in the success of the Conference they undoubtedly have just cause for satisfaction.

But what is the nature of this Peace Conference proposed by the President of the United States and assembled through the coöperation of Russia and The Netherlands? It is an assembly composed of representatives of the states accepting and applying in their intercourse the principles of international law, and in this assembly each nation represented is considered a unit and votes as a unit, although its delegates may be many or few. While it is, in one sense of the word, a deliberative body, it is not a parliament. Majorities show undoubtedly the trend of international feeling; but each nation, being independent and charged with the preservation of its existence, must judge for itself whether the conclusion of the majority is advantageous or detrimental either to its existence or legitimate interests. The majority may give pause and cause a state in the minority to reconsider its position in order to see whether what the many desire is not also desirable for the few. Majorities therefore exist, but they exercise a moral influence; they do not coerce. At most the decree or resolution of a majority binds the majority; it does not, and under existing conditions it cannot, well preclude an individual state.

A conference, then, is a diplomatic assembly, and the members of the Conference represent diplomatically their respective nations. It is the nation that speaks, not the individual who expresses an opinion; albeit this individual, by reason of his experience and ability, as well as the confidence which his character inspires, may exert a great personal influence not only in the deliberations but in the conclusions ultimately reached.

As international law is based upon the legal equality of states, it necessarily follows that each state has a vote, and but one vote. But while states are, legally speaking, equal, we know that in the world of affairs they do not possess equal influence. It is an axiom that men are created equal, but we interpret this equality, and properly, as an equality of legal right, as equality before the law. We do not mean that there is not and cannot be a difference in the individual calibre and ability of the man, and just as this man develops himself and acquires influence and standing, so the nation, by husbanding its resources and making a wise use of them, acquires standing and leadership in the family of nations. While, therefore, the Conference admits the equality of nations, and while each nation thus responds to the roll-call, Montenegro influencing the vote as profoundly as Russia, the Conference nevertheless admits that the support of the larger nations is necessary in order to give international force and effect to a proposition before it. For example: the attitude of Great Britain in matters of maritime law is controlling, and the view of Germany on the rights and duties of neutrals in time of war must carry great weight.

The purpose of a conference is to reconcile divergent views, and, by conciliation and renunciation if necessary, to produce substantial agreement. This often means that progressive measures are discarded for more moderate formulas, just as the advanced guard of an army halts that the laggard may catch up; for the purpose is not to secure the assent of the few, but to bind the many, and it is better to make haste slowly than by an excessive zeal to make no progress. The result of a conference, therefore, is often strangely at variance with the program. The sweeping reforms of the enthusiast are brushed aside and in their place tentative measures, timid measures perhaps, appear; but we must not forget that a step in advance is still a step in advance, and that the failure of to-day is the measure of the morrow.

In order that a conference may be a success, nations should not only be willing to accept compromises and act in the spirit of compromise, but they should in advance of the conference decide what interests they may safely renounce in the interest of all, rather than, by a rigid attitude, endeavor to secure international recognition of national interests. The general interests of humanity exceed the interest of any one nation, however powerful, and just as society strips man of his absolute rights as an individual, so the members of the family of nations must be prepared to renounce absolute rights in the interest of international harmony. As our Secretary of State said in his instruction to the American Delegation:

"In the discussions upon every question it is important to remember that the object of the Conference is agreement and not compulsion. If such conferences are to be made occasions for trying to force nations into positions which they consider against their interests, the powers cannot be expected to send representatives to them. It is important also that the agreements reached shall be genuine and not reluctant. Otherwise they will inevitably fail to receive approval when submitted for the ratification of the powers represented. Comparison of views and frank and considerate explanation and discussion may frequently resolve doubts, obviate difficulties, and lead to real agreement upon matters which at the outset have appeared insurmountable. It is not wise, however, to carry this process to the point of irritation. After reasonable discussion, if no agreement is reached, it is better to lay the subject aside, or refer it to some future conference in the hope that intermediate consideration may dispose of the objections. Upon some questions where an agreement by only a part of the powers represented would in itself be useful, such an agreement may be made, but it should always be with the most unreserved recognition that the other powers withhold their concurrence with equal propriety and right.

"The immediate result of such a conference must always be limited to a small part of the field which the more sanguine have hoped to see covered; but each successive conference will make the positions reached in the preceding conference its point of departure, and will bring to the consideration of further advances towards international agreement opinions affected by the acceptance and application of the previous agreements. Each conference will inevitably make further progress and, by successive steps, results may be accomplished which have formerly appeared impossible."

But we must not judge a conference by its failures, even although we feel that the very failures open a vista of hope. A conference must be judged by its actual accomplishments. Tried by this criterion, the first Peace Conference justified its calling. It is true that the subject of disarmament met with little encouragement and no success; it is also true that attempts to limit the expenditures for military and naval establishments failed miserably, although these two subjects moved the Czar to call the Conference; but this Conference, which sat from the 18th day of May to the 29th day of July, 1899, marks the beginning of an era in the world's progress.

The first Conference was preëminently a peace conference, notwithstanding the fact that two of its three conventions dealt with war, for it sought to ameliorate the hardships and sufferings of warfare on land, as well as to apply to naval warfare the generous principles of the Geneva Convention. It did not attempt what would have been impossible — to abolish warfare. It

recognized it as an existing evil, and wisely attempted to lessen the evil which it could not eradicate.

While recognizing, however, the possibility of war, the Conference set itself seriously to devise measures whereby international difficulties might be settled before nations rush into war, led astray by passion and temporary interest, or drift slowly but surely into a state of actual hostility.

The monument of the Conference and its secure title to glory is the convention for the pacific solution of international conflicts, whereby it was provided that nations should use their best efforts to promote and to assure the pacific solution of international difficulties; that they might offer and exercise their good offices and mediation either before or during war, and that the offer of good offices and of mediation should not be considered an unfriendly act. The Conference, however, did not stop here. It created two institutions in which facts involved in an international controversy might be found and in which the controversy itself might be determined as between litigant and litigant in a court of justice.

The first institution was the International Commission of Inquiry, to be established by contending parties in order to substitute for passion and prejudice the impartial and conscientious examination of the facts in controversy by commissioners appointed by each of the contending countries under the guidance of an umpire, chosen by the commissioners or by a third power designated by the parties to the litigation. I need only call your attention in passing to the findings of the International Commission of Inquiry in the Dogger Bank incident, which at one time threatened to embroil Great Britain and Russia in war.

The second institution was the Permanent Court of Arbitration, which consists of not more than four judges, versed in international law, appointed by each signatory of the convention; and from these judges, whose names are entered upon a list and notified to the signatories, a temporary tribunal may be created to pass upon an international difficulty presented to it for consideration. Each party to the controversy chooses, unless another method is specified, two arbiters, and the four so chosen select an umpire. If the arbiters do not agree, a third power is designated by the litigant countries to select the umpire. If the parties do not agree upon this third power, each party litigant chooses a power and the two powers thus chosen select the umpire. The Conference adopted a code of procedure for the guidance of the tribunal when thus constituted.

But the framers of the convention were not satisfied with the simple creation of this institution. They believed in arbitration, and confessed their faith in Article 16 as follows:

"In questions of a judicial character, and especially in questions regarding the interpretation or application of international treaties or conventions, arbitration is recognized by the signatory powers as the most efficacious and at the same time the most equitable method of deciding controversies which have not been settled by diplomatic methods."

The nature and importance of these two institutions are evident. The International Commission of Inquiry secured the speedy and impartial ascertainment of facts involved in an acute controversy which might not be delayed without a fear of war. The Permanent Court of Arbitration with its temporary tribunal was meant to supply an international and impartial body before which nations might appear as litigants and settle their controversies by the resort to justice and reason, without the unsatisfactory and brutal appeal to the sword. Four cases have tested the institution and justified its creation.

The first Hague Conference was thus a peace conference. It did its duty well and nobly. It deserved a successor, and it had it. Will the second Conference — which labored for four months, from June 15 to October 18, 1907 — be equally fortunate? Does it deserve a successor? In the last two paragraphs of the *Acte Final* the Conference answered this query in the affirmative as follows:

"Lastly, the Conference recommends to the powers the holding of a third Peace Conference, which might take place within a period similar to that which has elapsed since the preceding Conference on a date to be set by joint agreement among the powers, and it draws their attention to the necessity of preparing the labors of that third Conference sufficiently in advance to have its deliberations follow their course with the requisite authority and speed.

"In order to achieve that object, the Conference thinks it would be very desirable that a preparatory committee be charged by the governments about two years before the probable date of the meeting with the duty of collecting the various propositions to be brought before the Conference, to seek out the matters susceptible of an early international settlement, and to prepare a program which the governments should determine upon early enough to permit of its being thoroughly examined in each country. The committee should further be charged with the duty of proposing a mode of organization and procedure for the Conference itself."

Though guarded in language, the meaning of this important recommendation is clear. A conference is to meet at an analogous period, that is to say, eight years hence; the powers — without specifying which or how many — are to agree upon a date sufficiently in advance of the meeting to give time for adequate preparation; a preparatory committee is to be constituted whose duty it shall be to collect the various propositions to be submitted to the Conference, to propose matters susceptible of an early international settlement, and to prepare a program sufficiently in advance of the Conference in order to permit a thorough examination and study, and, finally, the committee is to propose a mode of organization and procedure for the Conference.

This recommendation recognizes the fact that in becoming international the Conference has ceased to be national, and that therefore, being international, it should be organized and officered by the nations or by committees chosen from among the nations. The Conference ceases to be Russian without passing under the domination of any one power, and it is to be hoped that the proposed organization of the Conference will emanate not merely from one power, but will be the joint reflection and coöperation of the many. The Conference should not be officered by any one nation; it should elect its own officers, and these officers should be its servants, not its masters.

But we cannot accept as final the judgment of the Conference upon the value of the work accomplished by it, and the advisability of a third Conference must depend upon the positive results of the second and the probability of further progress in the third. To be called a peace conference its work must make for peace,

and a careful examination of the results of the Conference must show that the interests of peace were advanced; otherwise the name is a misnomer. We may therefore leave out of detailed consideration the various conventions dealing with the conduct of hostilities upon land or on sea, and the rules and regulations concerning the rights and duties of belligerents and neutrals. But we would be unjust to the Conference did we not state that carefully-considered conventions were adopted relating to the opening of hostilities; concerning the laws and customs of land warfare (a revision of the convention of 1899), the rights and duties of neutral states and persons in land warfare, the treatment to be accorded enemy merchant vessels at the outbreak of hostilities, the transformation of merchant vessels into vessels of war during hostilities, the laying of submarine automatic contact mines, the bombardment of undefended ports in time of war, the adaptation to naval warfare of the principles of the Geneva Conventions, the restrictions placed upon the exercise of the right of capture in naval warfare, the rights and duties of neutral powers in naval warfare, and the declaration forbidding the throwing of projectiles and explosives from balloons.

These various conventions would in themselves justify the calling of an international conference, but the conference would properly be called a war conference, although many of the provisions, by making that certain which was uncertain and by imposing restrictions in the interests of neutrals, make for peace.

We must examine the *Acte Final* to ascertain what was done to prevent, rather than to regulate and restrict, war, and such examination discloses the fact that this second International Peace Conference has, indeed, justified the ways of peace to man. The conventions looking toward the peaceful solution of international difficulties are three in number: First, the convention for the peaceful settlement of international conflicts; second, the convention concerning the recovery of contract debts; and, third, the convention establishing an International Court of Prize. A declaration recognizing the principles of obligatory arbitration and a recommendation that a Court of Arbitral Justice be established, based upon the project proposed by the Conference, look upon peace as at once the normal and permanent state of things. Of each of these in turn.

The convention for the pacific settlement of international conflicts was but a revision of the masterpiece of the first Conference, but the revision went to the defects and was so thorough that the resulting convention reflects almost as much credit upon the second as the original convention did upon the first Conference. The conception, however, is the work of the first Conference; its more perfect realization is the work of the second. The changes are largely changes in detail; the improvements are generally the result of practical experience. The principal addition is a provision for summary procedure in matters of lesser moment.

Let us note some of these changes. The original convention recognized as useful the proffer of good offices or mediation to states in conflict. The modified convention, while proclaiming anew the utility, states that it is desirable that good offices and mediation be offered. It is true, no positive duty is created; but from being useful, the good offices and mediation have become desirable. A moral duty springs into existence, and it cannot be doubted that law will one day give force and effect to the desire of the nations. In the meantime the termination of the Russo-Japanese War, through the good offices of the President of the United States, may well serve as a precedent.

The same remark applies to the modification introduced into the text of Article 9 of the original convention, which declared an International Commission of Inquiry to be useful in ascertaining disputed facts through an impartial and conscientious examination. There is here no legal duty, but there is likewise a precedent, namely, the peaceful settlement of the Dogger Bank incident by the International Commission of Inquiry created by the first Conference.

The recent Conference did not content itself with the addition of the word "desirable"; it examined in detail each article bearing upon the International Commission of Inquiry and revised and enlarged it, not merely in the light of theory, but in the light of experience and practice. The Commission of Inquiry of 1904 devised its procedure; the Conference, under the guidance of those who had participated in the Commission, reduced those temporary rules and regulations to the precision of a code. The original institution proved of service on an historic occasion. It is to be hoped that the revisions and the procedure of 1907 will increase the efficiency of the Commission and accelerate its findings of fact.

Passing now to the question of the Permanent Court of Arbitration. It will be remembered that the powers recognized questions of a juridical order as susceptible of arbitration, but the recognition is not followed by a duty to arbitrate questions of this nature. The revision expressed the desirability of the arbitration of such questions in the following apt clause: "Consequently it is desirable that the contracting parties should, as far as circumstances permit, have recourse to arbitration in any controversies which may arise on the above-mentioned question." The obligation, if any, is moral, but the recognition of desirability is an advance.

The provisions of 1899 regulating the choice of arbiters have already been given. They are defective in two ways: First, because they do not sufficiently safeguard impartiality in the choice of arbiters; and, in the second place, there is no way of selecting the umpire if the powers designated to make the choice fail to agree. The revision of 1907 seeks to obviate these objections by providing, first, that "each party appoints two arbitrators, of whom only one shall be a citizen or subject, or chosen from among those who have been designated by it as members of the Permanent Court. These arbitrators together choose an umpire." The meaning of this is, that at least one of the two arbitrators chosen by the state in litigation shall be a stranger to the controversy, and therefore free from national prejudice and bias. This provision, however defective it may be, makes for impartiality. In the next place, should the arbitrators be unable to choose an umpire, or if the powers selected fail to agree upon a choice, the revised convention provides that the powers intrusted "shall each present two candidates taken from the list of the members of the Permanent Court outside of the members designated by the parties, and not being the citizens or subjects of either of them. It shall be determined by lot which of the

candidates thus presented shall be the umpire." This provision not merely provides an umpire so as to constitute the court, but it provides that the umpire shall be chosen from among the members of the court, and shall not be a citizen or subject of either litigant. Of the five members thus selected, two must be — three may be — indifferent to the controversy, and the presence of each disinterested arbitrator is an additional guarantee of impartiality. Taking these provisions together, they assure the constitution of the court within a reasonable time, and an approach is clearly made to impartiality.

Article 62 of the revised convention is a further step in the direction of impartiality, for it provides: "The members of the Permanent Court shall not act as agents, counsel or attorneys, except for the power which has appointed them members of the court."

The procedure prescribed for the tribunal of arbitration was revised in the light of experience, and, indeed, by the very members of the court who had tried the cases presented to the tribunal. The only distinct addition to the machinery providing for the peaceful solution of international difficulties consists of the provisions concerning summary procedure. The cases submitted for summary decision are expected to be of limited interest and importance. The constitution of the court is simplified by providing for a court of three instead of five, and prescribing that the proceedings before the tribunal so constituted shall be in writing. Each party to the controversy, however, possesses the right to require the appearance of witnesses and experts before the tribunal.

From this brief indication, rather than summary, of changes made, it is evident that the convention of 1907 did not innovate; it is, however, equally evident that it continued, amplified and perfected the convention of 1899.

The next convention concerns the limitation of the use of force for the recovery of contract debts, and its importance is such that the exact text should be set forth in full:

"In order to avoid between nations armed conflicts of a purely pecuniary origin arising from contractual debts claimed of the government of one country by the government of another country to be due to its nationals, the signatory powers agree not to have recourse to armed force for the collection of such contractual debts.

"However, this stipulation shall not be applicable when the debtor state refuses or leaves unanswered an offer to arbitrate, or, in case of acceptance, makes it impossible to formulate the terms of submission, or, after arbitration, fails to comply with the award rendered.

"It is further agreed that arbitration here contemplated shall be in conformity, as to procedure, with Title IV., Chapter III., of the Convention for the Pacific Settlement of International Disputes adopted at The Hague, and that it shall determine, in so far as there shall be no agreement between the parties, the justice and the amount of the debt, the time and mode of payment thereof."

In simplest terms, this convention means that the contracting parties accept the principle of arbitration as obligatory in cases of contract indebtedness; that they bind themselves in the concrete case to submit to arbitration and renounce the right to resort to force. A debtor state, acting in good faith, has no need to fear a blockade of its ports with eventual occupation of its territory. It must agree, however, to arbitrate; it must actually arbitrate, and it must conform to the arbitral sentence in order to obtain the benefit of the renunciation of force.

The second article provides that the tribunal shall be organized, and the procedure followed shall be in accordance with the specific regulations touching these matters in the revised convention for the pacific solution of international conflicts. And in this connection attention should be called to a provision of the revised convention likely to be of genuine service. The statement of the controversy, or "Compromis," as it is technically called, is often difficult to formulate. If creditor and debtor not only wish but agree to arbitrate, they may be unable to agree to the statement of the controversy to be submitted. In this case, Article 53 of the convention for the pacific solution of international difficulties provides that the "Compromis" may be established by a commission composed of five members, selected from the Permanent Court, and that the commission so formed is competent to frame the issue, if requested to do so by one of the litigants, unless the parties have agreed to establish the "Compromis" in another manner. As the commission must be selected by the joint act of the parties in controversy, it follows that neither creditor nor debtor has this method forced upon it. The presence, however, of such a provision, exerts a moral pressure to conclude the "Compromis" or to permit its formulation by an impartial commission. This disposition will therefore be helpful; it cannot harm either party acting in good faith. The court shall examine the justice of the claim; shall establish the amount of the debt and the time and mode of payment, which findings shall be entered in the arbitral judgment and bind creditor and debtor alike. A judgment obtained by a powerful creditor need not be executed immediately, for the court by its judgment determines both the time and the mode of payment. As justice, that is to say, equity rather than law, is the basis of arbitration, it is to be hoped, indeed expected, that the justice administered will be tempered with mercy. In any case, good faith in submitting a controversy to arbitration, good faith in accepting and executing an arbitral award, will not only preserve the self-respect of the stronger, but will guard and protect the rights of the weaker. It should not be overlooked that this simple convention is of fundamental political importance, for it is the first international recognition of the Monroe Doctrine as applied to a concrete case.

The third convention provides for the establishment of an International Court of Prize. It may be said, perhaps, that, inasmuch as this convention presupposes war,— for capture is only permissible in time of war,— the creation of the court cannot be considered as a triumph for the cause of peace. But an institution which settles controversies between nations by peaceful methods removes the danger of a resort to arms, and therefore is an instrument of peace. It is none the less so because the controversy arose out of a war, for the purpose of a Prize Court is, by settling this very controversy, to prevent nations from resorting to armed settlement.

In times past the court of the captor has determined the lawfulness of prize, with every presumption in favor of the validity of the capture. The instances must indeed be rare in which the judge is not affected by national prejudice and bias. The institution of an international court, composed of fifteen judges, in which

the belligerents are represented, but in which the decision of the court is reached by a majority composed of neutrals, can only mean the substitution of an international point of view for the interested and therefore contracted national conception.

The belligerent is not condemned unheard, for he is represented upon the bench as well as by counsel before the court. The excesses of belligerents and the violation of neutral rights are subject to condemnation, not by the belligerent, inflamed by passion, but by the neutrals, who have taken the protection of neutral rights into their own hands.

The Court of Prize is a court of appeal. The national court tries the case, as heretofore, and an appeal lies from the court of first instance to a higher national court. Should the decision of this latter tribunal be unsatisfactory, or if the national court has not decided the case within two years after the capture, the litigating nation, or, with its permission, its subject or citizen, may request the transfer of the case to the International Court of Prize, which thereupon becomes seized of the law and the facts of the case. As the President said in his recent message to Congress:

"Any one who recalls the injustices under which this country suffered as a neutral power during the early part of the last century cannot fail to see in this provision for an International Prize Court the great advance which the world is making towards the substitution of the rule of reason and justice in place of simple force. Not only will the International Prize Court be the means of protecting the interests of neutrals, but it is in itself a step towards the creation of the more general court for the hearing of international controversies, to which reference has just been made. The organization and action of such a Prize Court cannot fail to accustom the different countries to the submission of international questions to the decision of an international tribunal, and we may confidently expect the results of such submission to bring about a general agreement upon the enlargement of the practice."

The lovers of peace and international progress hoped that the Conference would agree upon a general treaty of arbitration, for it seemed not only reasonable but feasible that all might do that which many had done separately. The general treaty thus concluded would have made the duty to arbitrate international instead of leaving it a national bilateral obligation. The public was the more confident because Article 16 of the Convention of 1899 declared the arbitration of juridical questions to be the most efficacious method of settlement. This expectation, however, was doomed to disappointment, caused, it would seem, by the unwillingness of Germany to bind itself to arbitrate all questions of a judicial nature with all the nations represented at the Conference. Germany accepted, however, the principle of obligatory arbitration and expressed its willingness to conclude special conventions with powers of its own choice, as it had already done in several instances. It was for Germany to decide this question for itself, and it decided against obligatory arbitration. In so doing Germany should not be made the subject of criticism.

Germany refused, however, to permit those powers that wished, to conclude a general treaty of arbitration, insisting that every act of the Conference should be unanimous, or substantially so, and that nothing should enter the *Acte Final* against the opposition of a single state, even although this single state was not to be bound by the convention concluded. A few powers shared this view, and we have thus the spectacle of a minority blocking the outspoken and energetic desire of the majority of the nations of the world. It would seem that if the majority cannot coerce the minority, the minority should not possess the power to coerce the majority. Feeling ran high, and threats were made of withdrawal, to prevent which the majority capitulated; for a treaty of arbitration concluded under circumstances of irritation and indirectly jeopardizing the calling of future conferences would have been but a sorry victory. The majority, however, was unwilling to let the question drop, lest it lose the benefit of its votes in favor of obligatory arbitration; therefore the following declaration was drawn up and unanimously agreed to:

"The Conference, conforming to the spirit of good understanding and reciprocal concessions, which is the very spirit of its deliberations, has drawn up the following declaration, which, while reserving to each one of the powers represented the benefit of its votes, permits them all to affirm the principles which they consider to have been unanimously accepted:

"It is unanimous:

"(1) In accepting the principle of obligatory arbitration.

"(2) In declaring that certain differences, and notably those relating to the interpretation and application of international conventional stipulations, are susceptible of being submitted to obligatory arbitration without any restriction."

The declaration registers an advance; not the advance hoped for, but, nevertheless, a distinct gain. In 1899 arbitration of questions of a juridical nature was recognized as the most efficacious and the most equitable method of settling international disputes unsolved by diplomatic means. The declaration of 1907 establishes the principle of obligatory arbitration, and all powers subscribed to this declaration. The ordinary treaty of arbitration exempts questions affecting the independence, the vital interests and the honor of the contracting countries. The declaration of 1907 solemnly affirms that "certain differences, and notably those relating to the interpretation and application of international conventional stipulations, are susceptible of being submitted to obligatory arbitration without any restriction." The declaration is thus a recognition, not merely of the desirability, but of the feasibility, of arbitration. It is not an obligation to submit any or all international controversies to arbitration. The mere existence, however, of the declaration will exert a moral pressure, and it can be asserted confidently, and without fear of contradiction, that no power in the future will accept a brief against obligatory arbitration. The present has cleared the way for the future, and we can well await it without fear and with a manly heart.

It may not be generally known — indeed, it does not seem to be suspected — that the Conference laid the foundations broad and deep for a Permanent Court of Arbitral Justice, composed of judges appointed for a definite period, namely, twelve years, and acting under a sense of judicial responsibility. The language of the *Acte Final* is clear and definite:

"The Conference recommends to the signatory powers the adoption of the project hereunto annexed of a convention for the establishment of a Court of Arbitral Justice, and its putting into effect as soon as an agreement shall be reached upon the choice of the judges and the constitution of the court."

An analysis of this simple but important paragraph shows that the recommendation is not to consider the

advisability of the establishment of a Court of Arbitral Justice, but the adoption of the project annexed for the organization of the court. In the next place, the project of convention is to be put into effect, and the court definitely constituted, as soon as the powers have agreed upon the method of selecting the judges thus constituting the court. The Conference therefore recommends for adoption a carefully considered project, annexed and made a part of the recommendation, to serve as a basis of the proposed court, and this project, when the judges are appointed, is to be the organic act of the court.

Passing to the project, we find that it consists of thirty-five articles dealing with the organization, the jurisdiction, and the procedure of the Court of Arbitral Justice. The purpose of the framers, as well as the nature of the court, appears clearly and concisely from the first paragraph:

"In order to advance the cause of arbitration, the contracting powers agree to organize, without interfering with the Permanent Court of Arbitration, a Court of Arbitral Justice, free and easy of access, composed of judges representing the different judicial systems of the world, and capable of assuring the continuity of arbitral jurisprudence."

Article 2 provides that the Court of Arbitral Justice shall be composed of judges and of deputy judges chosen from among persons enjoying the highest moral consideration and who meet the requirements in their respective countries for admission to high magistracy or who are jurists of known competence in international law.

Article 3 states that the judges and deputy judges are appointed for a period of twelve years, and that their mandate may be renewed.

Article 17 provides that the Court of Arbitral Justice is competent to decide all cases brought before it in virtue of a general stipulation of arbitration or in virtue of a special agreement.

Passing from the nature of the court, its composition and jurisdiction, Article 14 provides that the court shall meet once a year. It was supposed that the court would consist of approximately fifteen judges, and that it might be as expensive as it would be undignified for the court to meet and adjourn without business. It was felt, however, that cases might be ripe for presentation and that the court should be, as the first article says, free and easy of access. It is therefore provided in Article 6 that the court shall designate annually three judges, who shall form a special delegation (judicial committee), and three others destined to replace them in case the three first delegated cannot attend. The court is to meet at The Hague; likewise the delegation; but the latter is permitted to meet elsewhere if particular circumstances require it, for the delegation is competent to sit as a commission of inquiry, as a commission of arbitration, or, finally, as a court in a summary proceeding. Should there be no business before the court, the delegation may dispense with a meeting, and in case of necessity the delegation may convoke the court in extraordinary session.

Without entering into further details, it is seen that this court is to be a court in the judicial sense of the word, with at least one annual session; that the delegation or judicial committee is permanently in session for the trial of small cases that may be submitted to it; that, if the case be of importance, or if there be other sufficient reason, the delegation may convoke the court in extraordinary session; and an express provision requires the full court to be convoked upon the desire of any litigant nation which has a case before it ripe for decision. The judges are permanent judges acting under a sense of judicial responsibility, chosen in such a way as to represent the various judicial systems and the languages of the world. Having a secure tenure, they are not subject to removal or recall, and deriving their salary (6,000 florins per annum, with traveling expenses, and 100 florins a day during duty at The Hague) from the nations represented in the court, and being forbidden by Article 10 to receive any salary or sum from their own appointing governments, the judges are as free from the fear of dismissal as they are deprived of the hope of financial reward.

The project does not specify the number of states necessary to agree upon the appointment of judges, nor does it prescribe the number of judges to be appointed. It is therefore open to the nations desiring the establishment of such a court to agree among themselves to establish the court, which, when established, will be binding upon the parties so constituting it and will have all the prestige of The Hague. As the reporter said, in submitting the project to the Conference: "We have desired not merely to build the beautiful façade of the palace of international justice; we have constructed, and even furnished, the edifice, so that the judges only need enter and be seated." Lest this may seem exaggeration, I beg to quote the measured language of the President in his message to Congress:

"Substantial progress was also made towards the creation of a permanent judicial tribunal for the determination of international causes. There was very full discussion of the proposal for such a court and a general agreement was finally reached in favor of its creation. The Conference recommended to the signatory powers the adoption of a draft upon which it agreed for the organization of the court, leaving to be determined only the method by which the judges should be selected. This remaining unsettled question is plainly one which time and good temper will solve."

We are now prepared to answer the question whether the second International Peace Conference was in reality a peace conference, and whether it deserves a successor. It was international, because the nations of the world were represented. The first Conference invited but a fraction of the independent sovereignties; the present Conference invited forty-six nations, and forty-four attended. It was a peace conference, because its great measures sought, by preventing a recourse to arms, not only to preserve, but to establish peace.

First: It revised the convention for the pacific solution of international conflicts, so as to make it more comprehensive and more adequate to meet the purpose for which it was created.

Second: It agreed unanimously to renounce force and to submit to arbitration international difficulties arising out of contract indebtedness.

Third: It established an International Court of Prize, in order that the captor's acts should no longer be judged under the bias of national prejudice, but should be approved or disapproved, and the rights of neutrals safeguarded, by an international court in which the belligerent as well as the neutral interests are represented.

Fourth: It unanimously recognized the principle of obligatory arbitration, and stated with unanimity that certain great questions of a juridical nature, especially the interpretation and application of international conventions, are susceptible to obligatory arbitration without restriction.

Fifth: It laid the foundations, indeed established, a Court of Arbitral Justice, leaving, however, the appointment of the judges to the subsequent agreement of interested nations.

Sixth: It provided that a third International Conference of peace meet approximately eight years hence, under charge of the powers, and that the Conference organize and conduct its proceedings under a sense of international responsibility and under the domination of no one nation.

I submit, therefore, that the second International Peace Conference justified not only its name, but its calling; that it was worthy of its great predecessor; that its meeting has bettered the world and given mankind a hope for the future, and it therefore deserves a successor.

The Conditions of Peace Between the East and the West.

BY J. H. DEFOREST, D. D.

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Address at the Annual Dinner of the American Peace Society, May 12, 1908.

It is easy enough for the average mind to say that, since public opinion against war is increasing from age to age, since peace societies, humanitarian sentiments, arbitration and the Hague tribunal are well to the front, that these and similar conditions that make for peace may be relied upon to carry us successfully through this new experiment of vast dimensions — the coming together of the East and the West without the curse of great wars.

Very well. Let us give thanks for all the growing conditions that make for peace and friendship among all nations. But let us also humbly bear in mind two facts: (1) All these forces combined are not yet powerful enough to insure even our so-called Christian West from the danger of war among ourselves. Europe is armed to the teeth and the voice of peace is yet powerless to win disarmament. (2) If in a great civilization like ours, based on a common history, a common religion, a common body of laws and customs, we are still armed for possible conflicts among ourselves, what can we expect when two great civilizations, hitherto comparatively ignorant of each other, come in mutual contact — civilizations with wholly different languages, laws, governments; with religions whose differing sacred traditions are a potent cause of misunderstandings; and the whole problem yet more complicated by race prejudice and by vast economic disturbances?

We have a great unfinished problem in our own western hemisphere as to how we can secure a century of peace at home; and now to this is added another, every way more complex and difficult: how to bring the two halves of the human race into relations of permanent peace based on permanent friendship. It is this last problem I will try to discuss, though briefly and imperfectly, limiting myself to certain phases of the political and religious conditions under which the West meets the East.

THE POLITICAL PROBLEM.

In the political meeting of the East and the West there are many things that rasp the feelings of the people out there, and these we ought to study with great care. Politically we meet them as superiors, relegating them to the place of inferiors. This we call in international law exterritoriality. I do not think the ordinary man or woman of the West has any idea of the ceaseless friction and discord and hatred that this system of exterritoriality enforced on the East breeds in the minds of the people out there. You cannot take up a daily paper in the Eastern ports, or enter into a piazza talk at the hotels, or watch the conduct of men in the foreign settlements, without running up against some form of exterritoriality that is offensive and hateful to the people of the land.

THE GOOD OF EXTERRITORIALITY.

Of course, I know that the system of exterritoriality has its good side; that it is the only way our ablest and best jurists have discovered by which commerce and international intercourse are possible on peaceful lines with the East. In the case of Japan it was the spur that hastened her adoption of Western codes of laws, and enabled her to enter among world powers as a political equal many decades sooner than might otherwise have been possible. And under this system those splendid emporiums of Yokohama, Kobe, Shanghai and others have risen from nothing to be counted among the most prosperous centres of world commerce, and, better yet, centres for the distribution of world knowledge.

THE BAD OF EXTERRITORIALITY.

But all the same, exterritoriality at its best is an infringement of territorial sovereignty, and that is what no independent nation will permit, unless gunboats force it. Its very definition carries a sting in it, for, as Woolsey says, it is "to protect the citizens of civilized nations against the unsuitable laws of more barbarous countries."

There it is! We are civilized, they are semi-barbarous. One illustration will show how it works. Yokohama, fifty years ago, was a small plot of ground ceded to the foreign powers, whereon their nationals were permitted to live and do business. It grew rapidly to be a commercial city of world significance. But the foreigners there were cooped up within a few acres, and could not spend a night, or do business, outside of these narrow limits. On the other hand, Japan had no authority within the foreign settlement. If a foreigner struck, robbed or killed a native, the Japanese could not arrest and try and punish him, but each of the sixteen foreign consuls had his own court for his own nationals. And there were always foreign warships in Japanese waters as delicate reminders of our purpose to maintain our exterritorial privileges.

A NATIONAL HUMILIATION.

You can easily see how all this must have exasperated a great and sensitive people with a history and traditions and literature and art and religions. One of my first discoveries thirty years ago was that the Japanese felt humiliated over their loss of territorial sovereignty, and would do everything possible to regain complete authority over everybody within their empire. "We must hasten the abolition of exterritoriality," was the burden of a stirring